IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 22927 of 2004

Between:

M.Koteswara Rao, S/o.Poulesu,
Vaidana Village, Ballikurava Mandal, Prakasam District.

..... PETITIONER

AND

1 The Joint Collector, Prakasam District, Ongole.
2 The Revenue Divisional officer, Prakasam District.
3 The Mandal Revenue officer, Ballikurava Mandal, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of Mandamus, declaring the order of the Revenue Divisional officer, Ongole, in Rc.C/1615/2004, dated.11-11-2004, as illegal, arbitrary, void and opposed at the principles of natural justice and also the provisions of A.P.State public Distribution system Control order, 2001 and further order that the petitioner be entitled to function as the F.P.shop dealer of Voidana village, Ballikurava Mandal, Prakasam District, pending the disposal of the appeal filed by the petitioner on 4-12-2004 before first respondent herein.

Counsel for the Petitioner: MR.I.GOPAL REDDY

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following ORDER:

Petitioner was appointed as a fair price shop dealer of Vaidana village, Ballikerava mandal of Prakasam district. The second respondent suspended his authorization through proceedings dated 11.11.2004. The petitioner challenged the same before the first respondent by filing an appeal. No orders are said to have been passed either in the appeal or in the application for stay. Hence, this writ petition.

Learned counsel for the petitioner submits that the suspension of the dealership of the petitioner was ordered as a substantive penalty, inasmuch as it was not said to be pending enquiry. He submits that in such an event, it ought to have been preceded by an enquiry, as contemplated under sub-clause (4) of Clause 5 of A.P. Public Distribution System Control Order, 2001.

Leaned Government Pleader for Civil Supplies, on the other hand, submits that the suspension was ordered pending enquiry and, in fact, a show cause notice was also issued.

The short question that arises for consideration in this writ petition is whether the suspension ordered against the petitioner was as a measure pending enquiry or as a substantive penalty itself. The difference assumes significance in the context of the procedure prescribed under sub-cause (4) of Clause 5 of the Control Order. According to that provision, appointing authority is under obligation to issue notice and conduct enquiry before the authorization of a dealer is cancelled or suspended. This Court interpreted identical clause to the

effect that where the suspension is ordered, as a measure pending enquiry, it is not necessary to hold enquiry nor it need be preceded by a show cause notice.

In the order of suspension, it is not indicated that the same is ordered pending enquiry. On this short ground, the order of suspension is liable to be set aside.

Hence, the writ petition is allowed setting aside the order of suspension. Inasmuch as a show cause notice has already been issued to the petitioner and explanation is also said to have been submitted, it shall be open to the second respondent to pass appropriate orders either suspending or cancelling the authorization of the petitioner. Since the order of suspension is set aside, it shall not be necessary to the first respondent to pass any orders in the appeal. No order as to costs.

10.12.2004

Note:

Issue CC in three days.

(BO)

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To

1 The Joint Collector, Prakasam District, Ongole.
2 The Revenue Divisional officer, Prakasam District.
3 The Mandal Revenue officer, Ballikurava Mandal, Prakasam District.

4 Two C.Cs. to the Government Pleader for Civil Supplies, High Court Buildings, A.P., Hyderabad (OUT).

5 Two C.D. Copies